The problem in regard to conditions raises very similar issues. If a condition precedent to user is imposed, there is no difficulty in requiring it to be fulfilled before the public acquires rights.[9] But conditions subsequent stand on a different basis. It is more than inconvenient for the public to have to retire from land which it has been accustomed to use, and upon which it has expended money. The question arises most frequently thus: a man dedicates land for a certain purpose, and the public so uses it for a time; then an attempt is made to put it to another use, whereupon the dedicator brings ejectment on the theory of reverter for breach of condition. Because of a natural aversion to forfeitures, there has become well recognized a rule in regard to grants that courts will construe what is in form a condition subsequent as a covenant, in order to carry out what they consider the real intentions of the parties.[10] Then further, in these cases of dedication, on the ground that public policy demands that the public should not incur a forfeiture, the courts disregard intention, treat all conditions as covenants, and deny a writ of ejectment.[11] Accordingly, an injunction to prevent the misuse will be granted.[12] An interesting variation is suggested by a recent case. A man dedicated land to a municipality upon condition that a street be constructed thereon, and that the abutting property-owners be free from assessment therefor and for other street improvements. The municipality accepted, built the street, and then sought to assess the abutting property-owners therefor, but without success. *Perth Amboy Trust Co.* v. *Perth Amboy*, 68 Atl. 84 (N. J., Sup. Ct.). If we regard the cost of the particular improvement in the parties' contemplation as the price paid for the land, the decision seems supportable, the second condition being construed as a covenant, which is specifically enforced. But exemption from all future assessments would seem to be beyond the municipality's authority.[13] Illegal conditions subsequent are disregarded.[14] Accordingly, it would seem that this much of the arrangement, construed as condition or covenant, should be given no effect.[15]

STATE CONTROL OVER MARITIME RIGHTS. — Although to obtain general uniformity in the maritime law Congress was given the right to legislate as to maritime matters, much power remains in the states. Of course, rules of maritime law national in their scope cannot be changed by a state, nor is any state law valid which is contrary to the fundamental principles of maritime law.[1] But the federal government not only fails in certain cases

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[9] People *v.* Williams, 64 Cal. 498. A condition reserving the right to resume or change the use prevents dedication. San Francisco *v.* Canavan, 42 Cal. 541, 553. *Cf.* Fitzpatrick *v.* Robinson, 1 Hud. & B. 585.

[10] Avery *v.* New York, etc., R. R., 106 N. Y. 142.

[11] Cincinnati *v.* White's Lessee, *supra;* Barclay *v.* Howell's Lessee, 6 Pet. (U. S.) 498, 507. But the dedicator can recover the land when the public abandons it, or the appointed use becomes impossible. Halley *v.* Scott County, 78 S. W. 149 (Ky.); Campbell *v.* Kansas City, 102 Mo. 326. See Rowzee *v.* Pierce, 75 Miss. 846.

[12] United States *v.* Ill. Cent. R. R., 154 U. S. 225; Church *v.* Portland, 18 Ore. 73; Warren *v.* Lyons City, 22 Ia. 351.

[13] 2 Dill., Mun. Corp., 4 ed., § 781 *n.*; Smith, Mun. Corp., §§ 637, 1489. But see Bartholomew *v.* Austin, 85 Fed. 359.

[14] St. Louis, etc., R. R. *v.* Mathers, 71 Ill. 592; Scovill *v.* McMahon, 62 Conn. 378.

[15] Armstrong *v.* St. Mary's, 21 Oh. Circ. Ct. Rep. 16; Richards *v.* Cincinnati, *supra*; St. Louis *v.* Meier, 77 Mo. 13.

[1] Workman *v.* The Mayor, 179 U. S. 552; The Lyndhurst, 48 Fed. 839.

to assume exclusive jurisdiction, but expressly leaves certain judicial powers in the states, such as the jurisdiction over crimes committed within the three mile limit [2] and the authority to try all maritime actions *in personam* in the state courts as well as in admiralty.[3] Considerable legislative power also exists in the states in the absence of congressional action, for much of the maritime law is of purely local effect and much, indeed, is identical with the municipal law. Thus the courts hold quarantine [4] and pilotage [5] laws valid under the police power and uphold laws creating maritime liens [6] because of their local nature. And in general the regulation of the ordinary rights of persons and property within the territorial waters of the state is subject to state control.

A good test of the power to create rights of this last class is the effect given to the state statutes allowing an action for death by wrongful act, for which no remedy is otherwise provided in admiralty.[7] If the death takes place within the territorial waters of a state, the state statute becomes a part of the maritime law of that territory and an action is allowed in both the state [8] and the admiralty courts,[9] although a libel *in rem* will not be allowed unless the statute created a lien. It has been argued that there are two concurrent systems of laws operative within the territorial waters, the general maritime law and the state law. But although state and admiralty courts sometimes disagree as to what the law is,[10] the truth must be that but one law operates; and that law is the common maritime law as modified by state statutes. Thus, defenses good by the state law which created the right, such as contributory negligence, are good in admiralty when suit is brought there for death by wrongful acts.[11] Similarly in a suit in the state courts, as the death happened at sea, general maritime defenses such as the statute limiting liability apply.[12]

There is a further question as to the operation of this modified maritime law on vessels on the high seas owned by citizens of the state. It is universally recognized that the law of private vessels on the high seas is the law of the country of the owner, though there is conflict as to whether the jurisdiction is territorial or personal.[13] The state laws undoubtedly operate on the vessel unless that power has been ceded away. But the Constitution provides for no such surrender of sovereignty on the part of the states, and our courts have consistently treated vessels as belonging to the states of their owners, even to the extent of treating them as "foreign" vessels in other states.[14] The objections to the operation of state laws on the vessel in these cases apply equally to their operation within the territorial waters of the state. It has therefore been held that when death is caused

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[2] U. S. Rev. Stat. § 5339.
[3] U. S. Rev. Stat. § 563, cl. 8.
[4] Morgan's, etc., Co. *v.* La. Board of Health, 118 U. S. 455.
[5] *Ex parte* McNiel, 13 Wall. (U. S.) 236.
[6] The Lottawanna, 21 Wall. (U. S.) 558.
[7] The Harrisburg, 119 U. S. 199; The Alaska, 130 U. S. 201.
[8] Sherlock *v.* Alling, 93 U. S. 99.
[9] The Albert Dumois, 177 U. S. 240.
[10] See Workman *v.* The Mayor, *supra;* Liverpool Co. *v.* Phenix Ins. Co., 129 U. S. 397.
[11] Robinson *v.* Detroit, etc., Co., 73 Fed. 883.
[12] Loughin *v.* McCaulley, 186 Pa. St. 517. *Contra,* Duffy *v.* Gleason, 26 Ind. App. 180.
[13] Wharton, Conf. of Laws, § 356; Hall, Treatise on Internat. Law, 253-4.
[14] Crapo *v.* Kelly, 16 Wall. (U. S.) 610. See The Roanoke, 189 U. S. 185.

by a collision on the high seas between two vessels owned by citizens of the same state, recovery may be had in an admiralty court under the state statute. *The Hamilton*, 207 U. S. 398. This case is also important as it recognizes that the controlling law is the law of the vessel and not a general maritime law — a basic idea of certain much criticized cases in the lower courts.[15]

THE UNITY OF ESTATES NECESSARY TO EXTINGUISH AN EASEMENT. — The notion, found in the civil law, that one piece of land could have rights as against another piece of land,[1] was easily assimilated by the medieval legal mind.[2] That conception, unreasoning as it seems, cannot be wholly ignored today. It is fundamental that easements are an incident of land, even to the extent that a disseisor is entitled to the enjoyment.[3]

Property may be said to give the entitled party the power of applying it to all purposes; an easement to give the entitled party the power of applying the subject — that is, the servient tenement — to exactly determined purposes.[4] Two estates are thus presupposed, the dominant and the servient. Then, as an easement is a definite subtraction, accruing to the owner of the one, from the indefinite right of user or exclusion residing in the owner of the other, it follows that no one has an easement over his own land, for otherwise he would have a right in a thing against himself. Thus results the doctrine that if the two estates become united in ownership the easement is extinguished. The particular right is merged in the more extensive right, and the user becomes an act of property. The reason of the rule gains strength, in reality, from the so-called exception of the easement of watercourses, for there the user is not adverse.[5] And so in the case of a warren.[6] But the doctrine stands on a more technical ground than that of mere unity of ownership, as it is commonly stated. There must be unity of seisin.[7] Even then, if the estates are of different duration, the easement is merely suspended.[8] The user is then just as clearly an act of property, but the distinction is perhaps to be attributed to a medieval conception that in such cases the two pieces of land were not completely welded. In short, the principle seems to be that, in order to work extinction of the easement by merger, the owner of the two tenements must have an estate in fee simple in both of an equally durable, indeterminable nature.[9]

The further question arises, whether unity of possession or enjoyment must be added to the unity of seisin. A recent decision of the English Court of Appeal that, where the owner of the dominant tenement, who had a tenant, conveyed to the owner of the servient, an easement of light was

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[15] See 21 HARV. L. REV. 1, 75.

[1] See D. 8, 4, 12, . . . "that land is bound to land."

[2] See Bracton, fol. 220 b, § 1. "One estate is free, the other subjected to slavery."

[3] See Holmes, Common Law, 381.

[4] See Austin, Jurisp., 4 ed., 823.

[5] Sury *v.* Pigot, Poph. 166. "The thing hath its being *ex jure naturae*."

[6] Y. B., 35 Hen. VI, f. 55, 56, since, they say, "a man may have a warren in his own land."

[7] Thomas *v.* Thomas, 2 C. M. & R. 34; Dority *v.* Dunning, 78 Me. 381 (unity of an estate in fee and an estate for years).

[8] Rex *v.* Inhabitants of Hermitage, Carth. 239 (unity of a fee simple indeterminable with a fee simple determinable); James *v.* Plant, 4 A. & E. 749 (unity as coparcener in fee simple and tenant in common in tail general).

[9] See Gale, Easements, 7 ed., 486.